

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 92-2468  
Conference Calendar

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DAVID J. FANCHER,

Plaintiff-Appellant,

versus

R. CASTRO, ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. CA-H-88-2529  
- - - - -

March 18, 1993

Before KING, HIGGINBOTHAM, and DAVIS, Circuit Judges.

PER CURIAM:\*

David J. Fancher's pro se, in forma pauperis § 1983 complaint number H-88-2529 was dismissed as frivolous on September 6, 1991. On November 21, 1991, Judge Lake dismissed complaint number H-89-3911 as frivolous and imposed a \$50 sanction because several other actions, including H-88-2529, had been dismissed as frivolous.

On January 7, 1992, Fancher wrote to the district court clerk requesting information on the status of H-88-2529. He then

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\* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

filed a notice of appeal prepared on January 12. This Court sua sponte dismissed the appeal for lack of jurisdiction because the notice of appeal was filed more than 30 days after the entry of judgment. The district court denied Fancher's subsequent motion to reopen the time for appeal under Fed. R. App. P. 4(a)(6).

Fancher argues that the district court improperly denied his motion to reopen the time for appeal. The district court may reopen the time for appeal for a litigant who did not receive notice of a judgment, if the litigant files a motion within 180 days of the entry of the judgment or within seven days of receipt of notice of the judgment. Fed. R. App. P. 4(a)(6). This Court reviews the denial of a motion under Rule 4(a)(6) for an abuse of discretion. Matter of Jones, 970 F.2d 36, 39 (5th Cir. 1992).

Assuming Fancher did not receive timely notice of the September 6, 1991, judgment, as required under Fed. R. Civ. P. 77(d), he concedes that he did receive notice of the dismissal of the action in Judge Lake's November 20, 1991, order. However, he did not take any action to protect his appellate rights until January 7, 1992, more than seven days after receiving notice of the judgment. The district court did not abuse its discretion by denying the motion to reopen the time for appeal.

AFFIRMED.